IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 590 of 1998
in
SPECIAL CRIMINAL APPLICATION NO. 205 OF 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA
and
Hon'ble MR.JUSTICE R.R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

CHIEF OFFICER

Versus

CHARAN RAJMAL BHURA

Appearance:
MR JR NANAVATI for Appellant - Chief Officer of Porbandar Nagar Palika.
No one has appeared on behalf of respondent no.1 - Charan Rajmal Bhura despite service.
Ms Harsha Devani, ld. APP for respondents nos.2 and 3.

CORAM : MR.JUSTICE M.R.CALLA
and
MR.JUSTICE R.R.TRIPATHI

Date of decision: 13/06/2000

ORAL JUDGEMENT (per M.R.Calla, J.)

This Letters Patent Appeal is directed against the interim order dated 13th March 1998 passed by the learned Single Judge in Special Criminal Application No.205 of 1998 as was filed by the respondent no.1

against the State of Gujarat, the Chief Officer of Porbandar Nagar Palika and the District Supdt. of Police, Porbandar. The learned Single Judge directed to maintain status-quo in respect to subject land in actual possession of the petitioner (respondent no.1 herein) till further orders and that the respondent no.2, i.e. the Chief Officer of Porbandar Nagar Palika shall arrange to draw a panchnama of the actual land admeasuring 100 sq.mts; as allotted to the petitioner (respondent no.1 herein) vide Land Rev. Account No.0029 dated 2nd March 1998 which was in possession of the petitioner (respondent no.1 herein) and to provide protection to him and to maintain status-quo for actual possession of the subject land till further orders.

2. It may also be pointed out that the respondent no.1 herein had earlier preferred a Special Civil Application No.8103 of 1997 with regard to the same land on the ground that his case for regularisation was pending with the Government and therefore, the respondents be restrained from dispossessing him. That Special Civil Application No.8103 of 1997 was decided on 5th November 1997 (Coram: M.S.Shah, J.) directing the Government that the representations of the petitioner (respondent no.1 herein) for regularisation of the land in question be considered and decided as expeditiously as possible and in any case before December 31, 1997 and till then, the respondents were directed to maintain status-quo as on the date of the order, i.e. 5th November 1997. With the observations and directions as above, the Rule was made absolute to that extent in Special Civil Application No.8103 of 1997. It has been pointed out by Mr.J.R.Nanavati appearing for the Chief Officer of Porbandar Nagar Palika that a review application being Misc.Civil Application No.199 of 1997 was filed on behalf of Porbandar Nagar Palika against the order dated 5th November 1997 as had been passed by a Single Bench of this Court in Special Civil Application No.8103 of 1997. During the pendency of this review application, i.e. Misc. Civil Application No.199 of 1997, the representations of the petitioner (respondent no.1 herein) for regularisation was decided and rejected by the Government on 26th December 1997, i.e. before the expiry of the period as was granted by the order dated 5th November 1997. Thus, the respondent no.1 herein lost the case of regularisation of the land in question before the Government on 26th December 1997. Thereafter, when the review application filed by Porbandar Nagar Palika, being Misc. Civil Application No.199 of 1997 came up before the Court, it was dismissed on the ground that the representation of the respondent no.1 herein with regard

to regularisation of the land had already been rejected by the Government. Thus, the order dated 5th November 1997 had been implemented though the result was against the respondent no.1 before the Government and in view of these facts, it was not considered necessary to adjudicate the review application and the review application filed by Porbandar Nagar Palika was accordingly rejected on 23rd April 1998. It is given out by learned APP as well as Mr.Nanavati that after the rejection of the representation for regularisation on 26th December 1997, respondent no.1 again approached the District Collector, Junagadh with a copy of the Govt. Resolution dated 19th February 1998 on the basis of which the allotment was made in favour of the respondent no.1 on 2nd March 1998. The Collector inquired about this Govt. Resolution dated 19th February 1998 through his letter dated 12th March 1998 and found that no such Govt. Resolution dated 19th February 1998 had been passed and the petitioner (respondent no.1 herein) had applied on the basis of a forged document, i.e. forged Resolution dated 19th February 1998. In view of these facts, an FIR was lodged against the respondent no.1 for offences under Sec.447, 467, 468, 471 and 114 of the Indian Penal Code and that case registered as CR No.I-38/98 dated 14th March 1998 with the Porbandar Police Station is pending and on the basis of this FIR, the case for his prosecution is under consideration.

3. In view of the facts stated hereinabove with regard to the alleged forged Govt. Resolution dated 19th February 1998 on the basis of which the respondent no.1 herein has claimed the allotment of land before the District Collector, for the purpose of this Letters Patent Appeal, we do not express any opinion as to what is going to be the fate of the main Special Criminal Application No.205 of 1998 which is said to be still pending but so far as as the present impugned order in this Letters Patent Appeal is concerned, i.e. order dated 13th March 1998 passed by the learned Single Judge, we are satisfied that the respondent no.1 as the petitioner in the main Special Criminal Application No.205 of 1998 had no prima facie case for the purpose of the interim order. The interim order as was passed by the learned Single Judge cannot be now allowed to be continued and deserves to be vacated forthwith in view of the fact that the representation of the respondent no.1 with regard to the regularisation has been rejected and the subsequent claim which he had set up on the basis of the alleged forged Resolution dated 19th February 1998 on the basis of which the impugned order of allotment dated 2nd March 1998 in favour of the respondent no.1 may have

been passed clearly shows that the appellant has no title with regard to the land in question and Porbandar Nagar Palika is within its rights to proceed to dispossess the respondent no.1 from the land in question as it is established on the basis of the facts stated hereinabove that the respondent no.1 has no prima facie case whatsoever for such an interim order and once we find that the respondent no.1 is also sought to be prosecuted for production of a forged document before the District Collector, the equity also cannot be said to be in his favour. The order dated 13th March 1998 passed by the learned Single Judge therefore, cannot be sustained and the same is hereby set aside. This Letters Patent Appeal is allowed accordingly as above.

4. The record of main Special Criminal Application no.205 of 1998 has been reported to be not traceable by the Registry. Learned APP has also pointed out that this Special Criminal Application No.205 of 1998 was ordered to be tagged with Special Criminal Application No.275 of 1998. The Registry may, therefore, trace out Special Criminal Application No.205 of 1998 and Special Criminal Application No.275 of 1998 and list both the matters for final disposal before the concerned Bench without any loss of time.

(M.R. Calla, J.)

(R.R. Tripathi, J.)

Sreeram.